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Message Text

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17
ACTION TRSE-00

INFO OCT-01 EA-07 ISO-00 EB-07 L-03 SS-15 NSC-05 SP-02

OMB-01 /041 W
---------- 122658
R 250601Z FEB 76
FM AMEMBASSY CANBERRA
TO SECSTATE WASHDC 7575

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DEPT PASS TREASURY

E.O. 11652: N/A
TAGS: EFIN, AS
SUBJECT: U.S.-AUSTRALIA TAX TREATY

REF: (A) STATE 030203, (B) CANBERRA 0468, (C) 75 STATE 277846

1. EMBOFF FEB. 24 CALLED ON SECOND COMMISSIONER OF TAXATION O'REILLY PURSUANT TO STATE 030203.

2. DURING LONG DISCUSSION, O'REILLY REITERATED STRONG AUSTRALIAN RELUCTANCE TO ACCEPTANCE NONDISCRIMINATION CLAUSE IN TREATY AS WELL AS PERSONAL SKEPTICISM RE POSSIBILITY ANY MEANINGFUL COMPROMISE. HIS INITIAL REACTION WAS HE WOULD HAVE TO CONSULT NEW GOVERNMENT BEFORE GIVING ANY RESPONSE TO QUESTION RAISED STATE 030003. AFTER FURTHER DISCUSSION, HOWEVER, WE DEVELOPED FOLLOWING CONCLUSIONS.

3. FIRST, O'REILLY DOES NOT HAVE AUTHORITY TO RESUME FORMAL NEGOTIATIONS ON ANY BASIS OTHER THAN OMISSION OF NONDISCRIMI-NATION CLAUSE, WITHOUT FIRST CONSULTING NEW GOVERNMENT.

4. SECOND, WHILE HE IS PREPARED TO GO TO THE GOVERNMENT WITH THE QUESTION AS PRESENTED IN STATE 030203, IT MIGHT BE MORE PRODUCTIVE FIRST TO HAVE SOMEWHAT MORE INFORMATION CONCERNING THE TYPE OF COMPROMISE WHICH ASSISTANT SECRETARY
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WALKER VISUALIZES BEFORE GOING TO THE GOVERNMENT.

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5. THIRD, WHILE O'REILLY COULD NOT AT THIS POINT RESUME
OR AGREE TO RESUME NEGOTIATIONS RESPECTING THE NONDISCRIMINA-
TION CLAUSE, HE WOULD OF COURSE BE HAPPY TO RECEIVE ON AN
INFORMAL BASIS ANY ADDITIONAL INFORMATION WHICH TREASURY
WISHES TO FURNISH CONCERNING THE TYPE OF COMPROMISE IT MIGHT
VISUALIZE. IF TREASURY WISHED TO SEND SOMEBODY TO CANBERRA
TO DISCUSS INFORMALLY THE NONDISCRIMINATION ISSUE (AND ONLY
THAT ISSUE) O'REILLY WOULD BE HAPPY TO RECEIVE HIM.
ALTERNATIVELY, HE WOULD BE GLAD TO REVIEW ANY WRITTEN
ELABORATION TREASURY CHOOSES TO PROVIDE.

6. ACTION REQUESTED: THAT TREASURY INDICATE WHETHER IT
WISHES TO PROVIDE O'REILLY ANY ADDITIONAL INFORMATION ON
COMPROMISE POSSIBILITIES BEFORE HE CONSULTS THE GOVERNMENT,
OR PREFER HIM TO RAISE THE QUESTION WITH THE GOVERNMENT
SOLELY ON THE BASIS OF STATE 030203.

7. EMBASSY COMMENT: O'REILLY WAS OBVIVOUSLY DISAPPOINTED
THAT OUR MESSAGE TO HIM DID NOT OFFER MORE ENCOURAGEMENT
CONCERNING A CHANGE IN THE BASIC UNITED STATES POSITION ON
THE NEED FOR A NONDISCRIMINATION ISSUE. THE LENGTHY
EXPLORATION OF COMPROMISE POSITIONS IN PAST BILATERAL
DISCUSSIONS HAS LEFT HIM DUBIOUS ABOUT THE POSSIBILITY THAT
A COMPROMISE POSITION MUTUALLY ACCEPTABLE TO THE TWO
GOVERNMENTS EXISTS. HIS INITIAL REACTION WAS TO PLACE OUR
INQUIRY BEFORE THE GOVERNMENT AND TO LEAVE IT AT THAT.
DURING OUR FURTHER DISCUSSION, HOWEVER, O'REILLY AGREED HE
WOULD HAVE NOTHING TO LOSE AND WOULD PROBABLY GAIN BY HAVING
ADDITIONAL INFORMATION ON TREASURY'S THINKING BEFORE RAISING
THE ISSUE AT CABINET LEVEL. HE IS UNDERSTANDABLY ANXIOUS,
HOWEVER, TO HAVE IT CLEARLY UNDERSTOOD THAT THIS DOES NOT
IN ANYWAY COMMIT HIM TO RESUME NEGOTIATIONS.

8. IN THE COURSE OF THIS DISCUSSION OF HIS NEGOTIATING
AUTHORITY, O'REILLY ALSO POINTED OUT IN PASSING THAT THE
PREVIOUSLY NEGOTIATED DRAFT ARTICLES WERE IN FACT STILL
SUBJECT TO GOVERNMENT APPROVAL. WHILE HE HAD NO REASON TO
BELIEVE ANY OBJECTION WOULD BE RAISED TO THEM AT
CABINET LEVEL WHEN, AS AND IF THEY ARE PRESENTED FOR APPROVAL,
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THE FACT IS THAT THEY ALSO WOULD REQUIRE GOVERNMENT APPROVAL
BEFORE HE COULD PROCEED FURTHER.
HARGROVE

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NNN

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